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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Meyers)
)
APPLICATION NO.: 09/652,927) Examiner: Lugo
)
FILED: October 31, 2000) Art Unit: 3677
)
FOR: TEE BAFFLE FOR USE AT INLET)
OR OUTLET OF SEPTIC AND)
OTHER ON-SITE WASTE)
DISPOSAL SYSTEMS)

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SUPPLEMENTAL AFFIDAVIT OF THEODORE W. MEYERS UNDER 37 C.F.R. §1.132

I, Theodore W. Meyers, hereby swear as follows:

1. I am the founder and President of Tuf-Tite, Inc. ("Tuf-Tite"), the Assignee of United States Patent Application No. 09/652,927, entitled TEE BAFFLE FOR USE AT INLET OR OUTLET OF SEPTIC AND OTHER ON-SITE WASTE DISPOSAL SYSTEMS, and I am also the sole inventor thereof.

2. I have reviewed the Office Action mailed on February 7, 2003, and the prior art references on which the rejections under 35 U.S.C. § 103(a) are based.

3. One purpose of this Supplemental Affidavit is to explain the reasons why I believe the prior art patents cited in the rejections set forth in the Office Action are different from my invention as claimed, or that there is no suggestion or motivation to combine the references in the proposed manner, so that it may be further appreciated why those references fail to render the invention as claimed in the pending application obvious. Another purpose of this Supplemental Affidavit is to submit additional consistent evidence of secondary considerations of non-obviousness, including commercial success copying by others, which, in conjunction with the evidence of non-obviousness submitted with my November 26, 2002 Affidavit, rebuts the obviousness rejections in the Office Action mailed February 7, 2003.

4. I, as a person skilled in the art to which my patent application pertains, would not have been motivated to combine the elongated body of the tee in Nurse, U.S. Patent No. 5,580,453, with the tee of Zoeller, U.S. Patent No. 6,136,190, the latter as modified to have an inlet/outlet hub that has a diameter sized so as to receive a pipe of a first outer diameter and being adaptable to receive a pipe of a second outside diameter. After careful review, I find no teaching or suggestion in either Nurse or Zoeller to combine them in the manner proposed. Zoeller shows the use of an expansion piece (30) in order to extend the length of the tee. This is just as described in the background section of my patent application, where it is explained that it is typical for an installer to cut off a relatively short portion of a 10' length of commercially available PVC pipe, for example 12", and use that separate length of pipe as the needed expansion piece, with the remainder of that PVC pipe length now being less usable, and often discarded as waste. The desire to avoid such unnecessary waste is one of the factors that motivated me to conceive of the invention as-claimed in my application. Thus, Zoeller's showing of a separate expansion piece teaches people ordinarily skilled in the art in a direction away from the use of an elongated main body portion.

5. Had it been obvious to provide an elongated main body portion in a tee having a cylindrical uppermost hub having an inner diameter greater than a diameter of the tee's main body portion, and an inlet/outlet port with an inlet hub, then Zoeller, which was filed two and a half years after the Nurse patent issued, would have been expected to teach and use an integral elongated main body portion, instead of continuing to teach the wasteful and cumbersome use of a separate expansion piece to cover a filter received within the tee. But the Zoeller patent does not.

6. With respect, I disagree with the statement in the Office Action that "Morrison teaches that it is known in the art to have a tee adapted to receive a pipe of a first or second outer diameter (by using a reducer as illustrated in Figure 8)." Morrison does not teach the use of a reducer. Rather, in Figure 8, Morrison shows a ring (a⁶) inserted in the hub to operate as a stop for the end of a succeeding tee, i.e. to avoid the presence of a slip joint, sealed by oakum and lead, within a pipe tee. There is no teaching in Morrison of a pipe received inwardly of the ring (a⁶). The vertical lines in the drawing of Figure 8 represent the interior of the ring, not part of a pipe. Since the ring is used as a stop, it would be directly contrary to the purpose of the ring (a⁶) in Morrison to have a pipe received inwardly of the ring (a⁶). A pipe received within the ring (a⁶) would have to be sealed within the ring with some type of caulk, such as the oakum and lead described in the specification of Morrison, thus introducing a slip joint, including caulk, into soil pipe. Yet, this is exactly what Morrison expressly indicates is sought to be avoided by providing the ring (a⁶) in the first place.

7. As to claim 21 of my patent application, and those claims depending therefrom, Ramm does not disclose the use of ribs extending along an elongated main body portion as recited in the claims. For the reasons explained in ¶¶ 4, 5 above, it would not have been obvious to modify the tee of Zoeller to include the elongated body of Nurse. The bases (12) with mating surfaces (14) in Ramm, are areas of weakness of the two-piece pipe fitting shown in Ramm, as opposed to strengthening ribs. Therefore, no motivated combination of Ramm with Zoeller, Nurse, and Morrison would result in the invention as recited in claim 21.

8. As to claim 5 of my patent application, there is no teaching in Ramm, or any of the other references listed in the Office Action, of the use of at least one horizontal reinforcement rib on an outer wall of an elongated main body portion.

9. Turning to what I understand to be the so-called "secondary considerations of non-obviousness," Tuf-Tite continues to sell tees made in accordance with the claims of the subject patent application, which are sold under the trade name "T-BAFFLE," and under Tuf-Tite's product number "TB-4." Attached as Appendix A to this Supplemental Affidavit is a sales report entitled "Sales History for TB-4, T-BAFFLE FOR SEPTIC TANK," which is a true and accurate thirty-six month record of the sales volume for the T-BAFFLE tees sold by Tuf-Tite covering the time period from August 1, 2000 through July 31, 2003. During this time period, Tuf-Tite sold a total of 157,826 T-BAFFLE tees. Only a very small portion of the tees listed in Appendix A, less than 1%, were tees provided as free samples to customers. Thus, the vast majority of such listed quantities, over 99%, represent actual sales of Tuf-Tite TB-4 T-Baffle tees.

10. The sales volume for the twelve month period of August 1, 2000 through July 31, 2001 was 48,697 units, the sales volume for the period of August 1, 2001 through July 31, 2002 was 49,147 units, and Tuf-Tite's strongest twelve month period of sales yet for the T-Baffle was August 1, 2002 through July 31, 2003, specifically 59,982 T-Baffle tee units, including 8,710 in May, 2003, representing the largest single month yet of T-Baffle sales. Only a very small percentage of the units listed in each of these three years, less than 1%, were free samples.

11. Based on my some 20 years of inventive, research, development, sales, manufacturing, trade show, and marketing experience in the on-site waste disposal system component business, during which time I have personally experienced the introduction of products ranging from highly commercially successful to unsuccessful, the sales figures shown in Appendix A reflect a substantial commercial success for the T-BAFFLE tees.

12. Attached as Appendix B is a listing, sorted by quantity, of sales on a state-by-state basis of TB-4 T-BAFFLE tees to various states. This listing is titled "Item Sales by State Code" and is captioned "Part by State" "TB-4".

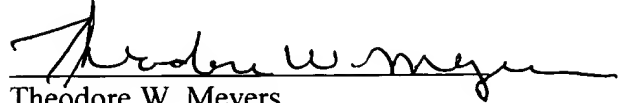
13. As demonstrated by the listing attached as Appendix B, in many states, such as California, Georgia, Maine, Arizona, Michigan, Ohio, and Missouri, Tuf-Tite realized rapid growth of sales of T-BAFFLE tees in the past twelve month period (under the heading "Qty Mos 1-12"), as compared with sales during each of the preceding periods. Further, the sales in those states continued to grow in each successive twelve month period. At least some of this growth is believed to be attributable to regulatory approvals finally occurring in certain counties or municipalities of such states, before which time precasters and installers of septic tanks and other on-site waste facilities that employ tees and filters were unwilling or unable to use T-BAFFLE tees in their jurisdictions.

14. Attached as Appendix C is a sales history listing, for customer ZIN1, which is Zabel Environmental Technology, a/k/a Zabel, Inc. ("Zabel"). This listing confirms that since the report attached as Appendix 2 to my Affidavit of November 26, 2002, Tuf-Tite still has not sent any T-BAFFLE tees to Zabel since May 18, 2001. As indicated in Appendix 2 to my original Affidavit, that May 18, 2001 shipment to Zabel was a free sample tee provided in an unsuccessful effort to re-gain Zabel's business with respect to the T-BAFFLE tee. Tuf-Tite has not sold any T-BAFFLE tees to Zabel since December 20, 2000. As indicated in Appendix C, Zabel continues to purchase various products from Tuf-Tite other than the T-BAFFLE tee.

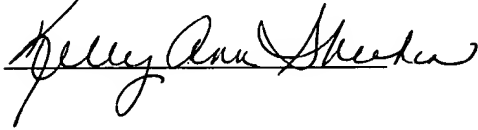
15. I hereby affirm that all of the foregoing statements are true and accurate to the best of my knowledge and belief, that each of the documents appended hereto are true and accurate copies of what they purport to represent, and that I am aware any false statements may subject

me to penalties for perjury and may jeopardize the validity of any patent(s) that may issue on the present application.

August 6th, 2003


Theodore W. Meyers
Inventor & President,
Tuf-Tite, Inc.

Subscribed and sworn to before me on this 6th
day of August, 2003





Sales History for TB-4, T-BAFFLE FOR SEPTIC TANK

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Pds	Past	End Date	Qty	Sls
36		08/31/00		3,096
35		09/30/00		5,639
34		10/31/00		2,602
33		11/30/00		5,981
32		12/29/00		6,907
31		01/31/01		4,145
30		02/28/01		1,477
29		03/30/01	REDACTED	2,601
28		04/30/01		3,025
27		05/31/01		5,695
26		06/29/01		3,634
25		07/31/01		3,895
Totals (36-25)				48,697
Avg. (36-25)				4,058.08
24		08/31/01		3,729
23		09/28/01		3,373
22		10/31/01		3,198
21		11/30/01		3,225
20		12/31/01		3,216
19		01/31/02		4,277
18		02/28/02		3,330
17		03/29/02		2,975
16		04/30/02		4,820
15		05/31/02		5,926
14		06/28/02		4,522
13		07/31/02		6,556
Totals (24-13)				49,147
Avg. (24-13)				4,095.58
12		08/30/02		5,885
11		09/30/02		5,107
10		10/31/02		6,357
9		11/30/02		3,429
8		12/31/02		3,453
7		01/31/03		2,939
6		02/28/03		3,175
5		03/31/03		3,050
4		04/30/03		4,847
3		05/30/03		8,710
2		06/30/03		5,285
1		07/31/03		7,745
Totals (12- 1)				59,982
Avg. (12- 1)				4,998.50

8/1/2003

Parts - U.S.		Part by State		
TB-4				
State	Qty Mos 37-48	Qty Mos 25-36	Qty Mos 13-24	Qty Mos 1-12
CA	693	5,111	7,722	10,176
NC	1,958	8,203	5,542	7,192
GA	139	70	4,804	7,181
NJ	887	4,202	4,491	4,884
ME	16	17	662	3,397
AZ	2	779	1,680	2,709
IN	518	620	2,390	2,353
CT	1,555	4,141	3,122	2,276
HI	288	793	1,724	1,984
NH	257	1,539	1,510	1,943
NY	397	1,977	2,289	1,917
OH	19	476	1,246	1,907
MD	360	759	1,292	1,488
IA	334	1,421	1,895	1,384
MO	18	50	989	1,227
VT	0	812	1,577	1,145
WV	106	1,321	1,322	1,142
MN	3	216	490	669
MT	32	4	469	639
IL	108	359	398	566
ID	17	9	778	495
	15	0	1	385
MA	69	137	58	355
VA	73	75	130	336

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Item Sales by State Code				
Parts - U.S.		Part by State		
TB-4				
State	Qty Mos 37-48	Qty Mos 25-36	Qty Mos 13-24	Qty Mos 1-12
DE	0	1	32	317
OR	866	2,733	196	301
KY	2,885	11,211	51	269
AR	259	87	789	260
FL	1,037	212	518	199
WI	0	3	10	187
PA	19	93	268	159
TX	30	189	168	139
LA	10	32	56	106
RI	390	692	81	105
WA	1	34	163	82
NH	0	1	1	68
CO	8	8	16	40
AL	2	21	61	29
OK	0	3	15	16
WY	2	1	1	15
NV	0	1	9	8
SC	1	0	6	4
TN	0	17	1	3
UT	0	0	21	1
NE	2	17	6	1
KS	0	11	4	0

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						Code
Lookup	Name/Address	Invoices/Orders	Notes	History	Picture	
ZABEL ENVIRONMENTAL TECHNOLOGY						
Item	Last Sale Dt	Item Description	Mo. 37-48	Mo. 25-36	Mo. 13-24	Mo. 1-12
SL-4	07/29/2003	4" SPEED LEVELER	600	2,050	4,700	3,000
DBO6	06/12/2003	6" DROP BOX-OUTLET DRO	0	0	336	400
4HD2	07/29/2003	4 HOLE DISTRIBUTION BOX	60	324	485	300
6HD2	06/12/2003	6 HOLE DISTRIBUTION BOX	60	180	473	200
9HD2	08/15/2002	9 HOLE DISTRIBUTION BOX	55	0	60	50
TB-4	05/18/2001	T-BAFFLE FOR SEPTIC TANK	2,881	11,161	0	0

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